

with the Court's Amended Scheduling Order, Plaintiff further amended his Complaint on September 30, 2019 (Dkt. 72), which Defendants answered on October 30, 2019 (Dkt. 79).

3. Since that time, the parties have continued to engage in substantial discovery. In particular, the parties have exchanged multiple written discovery requests, and both parties have produced documents in response to the other party's requests for production. The parties have also engaged in substantial third-party discovery, with Defendants having issued over two-dozen subpoenas to various third parties.

4. On January 15, 2020, Defendants moved to compel Plaintiff Ed Butowsky to comply with Defendants' discovery requests (Dkts. 85, 87). Plaintiff produced approximately 300 pages of documents in this case. (*Id.*). In the related litigation *Aaron Rich v. Butowsky*, Butowsky has produced 1,429 documents, and his counsel has represented that "6,452 documents representing a total of 29,920 pages" have been located before even searching all of Plaintiff's email accounts. *See* Case No. 1:18-cv-00681-RJL (D.D.C. Jan. 23, 2020), Defs' Reply to Opp. to Mot. to Extend or Stay Discovery (Dkt. 130, p. 3) (attached hereto as Ex. A). Further, Butowsky has voluntarily conducted a forensic exam of his devices (which has only been partially completed) in the *Rich* case (*Id.*), and one can logically surmise that the completion of such exam will bring to light additional relevant documentary evidence in the case at issue.

5. Additionally, Plaintiff has moved to compel discovery from the Federal Bureau of Investigation (Dkt. 75),¹ and Defendants have moved to compel discovery from Plaintiff's company, Chapwood Capital Investment Management, LLC ("Chapwood"),² his business

¹ On December 13, 2019, this Court denied Plaintiff's Motion to Compel discovery from the Federal Bureau of Investigation. (Dkt. 80).

² *Folkenflik v. Chapwood Capital Investment Management, LLC*, Case No. 3:20-mc-00007-N (N.D. Tex. Jan. 24, 2020).

partner, Kim Sams,³ and his IT specialist, Orone Laizerovich,⁴ as well as out-of-state witness, Rod Wheeler.⁵ The motions to compel Mr. Butowsky, Chapwood, Ms. Sams, and Mr. Laizerovich remain pending, and additional motions to compel are anticipated in light of several third-parties' ongoing failure to comply with Defendants' subpoenas.

6. The parties' efforts to engage in discovery have also been delayed by Mr. Butowsky's medical condition. In related litigation, Butowsky has represented to the court that he has been "battling a very severe medical condition since 2017 and has recently suffered a severe downturn in his health." *See* Ex. A. In that lawsuit, in which Butowsky is a defendant, Butowsky has represented that his poor health "has sharply interfered with his ability to participate in the lawsuit," thereby requiring an extension of discovery, or, in the alternative, that discovery be indefinitely stayed. *See* Defs.' Mot. to Extend or Stay Discovery, *Rich v. Butowsky*, Case No. 1:18-cv-00681-RJL (D.D.C. Jan 13, 2020), Dkt. 106 (attached hereto as Ex. B). Mr. Butowsky has similarly represented to Defendants in this case that his poor health has interfered with Chapwood's ability to comply with the third-party subpoena issued by Defendants in this case. (*See* S. Biss email to D. Bodney dated January 15, 2020 attached hereto as Ex. C.) Plaintiff also requested additional time to respond to Defendants' Motion to Compel because of Butowsky's medical circumstances. (*See* S. Biss email to L. Prather dated Jan. 27, 2020 attached hereto as Ex. D).

7. In light of Plaintiff's poor health, the pendency of several motions to compel discovery from Plaintiff and relevant non-parties, and the number of third parties from whom discovery must be obtained and the number witnesses who must be deposed, the parties have

³ *Folkenflik v. Sams*, Case No. 3:20-mc-00005-K (N.D. Tex. Jan. 16, 2020).

⁴ *Folkenflik v. Laizerovich*, Case No. 3:20-mc-00009-E (N.D. Tex. Jan. 24, 2020).

⁵ *In re: Motion to Compel Compliance of Subpoena Issued to Rod L. Wheeler*, Misc. Action No. 19-175 (JDB) (D.D.C. Jan 3, 2020).

mutually agreed that additional time is necessary for completion of discovery, the deadline to file dispositive motions, and trial. The parties' agreement to amend the schedule is a reflection of certain unforeseen developments in this case and a realistic, early assessment of their impact on the existing schedule. Accordingly, the parties jointly request that the unexpired portions of the August 21, 2019 Scheduling Order (Dkt. 70) be modified, as set forth below.

8. The parties jointly request that the following deadlines set forth in the current Scheduling Order be modified as follows:

- A. Deadline for completion of discovery: October 30, 2020.
- B. Deadline to file Motions to Dismiss, Motions for Summary Judgment, or other dispositive motions: December 15, 2020.
- C. Date by which the parties shall notify the Court of the agreed-upon mediator, or alternatively request that the Court select a mediator: January 22, 2021.
- D. Deadline to (i) provide notice of intent to offer certified records (ii) confer concerning preparation of Pretrial Order and Proposed Jury Instructions and Verdict Form and (iii) submit video deposition designations: February 15, 2021.
- E. Deadline to (i) complete mediation (ii) file Motions in Limine and (iii) file Joint Final Pretrial Order: March 1, 2021.
- F. Deadline to (i) file Responses to Motions in Limine (ii) file objections to witnesses, deposition extracts, and exhibits listed in the Pretrial Order and (iii) file Proposed Jury Instructions and Verdict Form: March 20, 2021.

G. Final Pretrial Conference: April 12, 2021, or as near to that date as is possible given the Court's calendar.

9. Except as set forth in this Agreed Motion, all other deadlines set forth in the Court's August 21, 2019 Amended Scheduling Order (Dkt. 70) shall remain unchanged.

WHEREFORE, Plaintiff and all Defendants request that the Scheduling Order be modified as requested herein.

Respectfully submitted,

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